UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

SUMMIT FIRE & SECURITY LLC

Employer

and **Case 27-RD-278799**

ZACH WYNN

Petitioner

and

ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, COLUMBIA MARYLAND, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA

Union

DECISION AND DIRECTION OF ELECTION

Summit Fire and Security LLC (Employer), a State of Delaware limited liability company, installs, repairs, and inspects fire suppressant systems for commercial and residential clients. It has approximately 24-26 branches, including a branch in Salt Lake City, Utah, (Branch) which is the only branch involved in this matter.

On approximately May 18, 2021, the Employer entered into a Section 8(f) agreement with Road Sprinkler Fitters Local Union No. 669, Columbia Maryland, of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Union) effective May 14, 2021 through January

31, 2026. The unit includes all full-time and regular part-time sprinkler fitters, approximately 14 employees as of May 14.[1]

On June 21, 2021, Zach Wynn, an individual Petitioner (Petitioner), filed a petition seeking a decertification election at the Employer's Salt Lake City Branch in a unit that at the time of the hearing includes approximately 10 employees. The Union seeks to exclude current unit members Dustin Mills (D. Mills) and Jacob Wynn (J. Wynn) because they are relatives of the branch's management team.[2] The parties also disagree on whether a manual or a mail ballot election should be conducted, with the Union seeking an election by mail.

A hearing officer of the Board held a videoconference hearing in this matter on July 13, 2021, and both the Union and the Employer filed post-hearing briefs. As explained below, based on the record, the briefs, and relevant Board law, I find that the Union has not caried its burden of establishing that D. Mills and J. Wynn are ineligible to vote. Because of the current state of the COVID-19 pandemic in Salt Lake County, Utah, where the Branch is located, I have directed that the election take place by mail.

I. THE VOTER ELIGIBILTY ISSUE

A. The Employer's Operation

The Employer acquired its Salt Lake City Branch on June 24, 2019, when it purchased Chaparral Fire Protection. (Chaparral). Prior to the acquisition, Travis Mills (T. Mills), held approximately 10% ownership in Chaparral and served as its vice-president. Dale Maxfield

[1] Specifically, the bargaining unit:

Included: All full-time and regular part-time Sprinkler Fitters of the Employer's branch location at 3676 West California Avenue, Suite D100, Salt Lake City, Utah 84104 engaged primarily or exclusively in the installation, maintenance, and repair of fire sprinkler systems, including the unloading, handling by hand or with power equipment, and installation of all piping or tubing, appurtenances, and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants, and hydrant mains, standpipes, and hose connections to sprinkler systems, sprinkler tank heaters, and air lines used in connection with fire sprinkler systems, but excluding steam fire protection systems and excluding the inspection or testing of fire protection systems.

Excluded: All other employees, including all field technicians not primarily engaged in the scope of work described above (for example, technicians handling inspections, alarm systems, surveillance systems, air sampling smoke detection systems, dry chemical systems, CO2 systems, clean agent systems, and pre-engineered systems), all office employees, Confidential employees, Managers, Supervisors, and Guards, as defined by the National Labor Relations Act.

[2] The Union originally sought to exclude Petitioner Zach Wynn, a current unit member, but withdrew its objection as to him at the hearing and stipulated that he is eligible to vote in the election.

held an approximate 5% ownership in Chaparral and served as its senior estimator. [3] T. Mills currently has less than a .05% equity stake in the corporate entity that owns the Employer. He serves as the Salt Lake City Branch manager. The parties stipulated that he is a statutory supervisor under Section 2(11) of the Act. Maxfield has a smaller equity stake than T. Mills. He serves as the Salt Lake City operations manager.

Branch Manager T. Mills oversees the Employer's Salt Lake City Branch. Mills has no role in running the Employer's other branches or any responsibility for hiring the Employer's senior leaders. Nor does Mills have any authority to change the Employer's policies, procedures, or benefits.

T. Mills reports to Nic Brown, the Employer's president. Mills needs prior approval from President Brown and the Employer's Human Resources Department before hiring or terminating branch employees but has had a role in determining which Chaparral employees the Employer hired. T. Mills has recommended starting wage rates and typically participates in employees' annual reviews. He also occasionally effectively recommends wage increases but needs approval from President Brown and human resources.[4] T. Mills can issue discipline for initial violations, but generally involves human resources when subsequent violations occur or where the discipline involves time off.

Operations Manager Maxfield reports to T. Mills. Maxfield "oversees the shop." He estimates and secures work and verifies workload. He has no role in granting pay raises.[5]

Unit employees perform work over an approximately 200-mile radius. In general, the Employer assigns employees to jobs based on their skills and distance from their homes to job sites. Employees can suggest where and what job they want to work. Employees generally drive to job sites directly from their homes and only go to the Branch facility a few times per-month to pick up parts or prints.

B. Dustin Mills

D. Mills is the brother of Branch Manager T. Mills. The bargaining agreement classifies D. Mills as a journeyman. He worked for Chaparral from 2009 to 2015 before

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[3] A third individual, not at issue here, owned the remaining 85% of Chaparral. The record does not disclose how many stockholders the Employer has or who owns the majority of the Employer's stock.

[4] Chaparral employees who continued to work for the Employer initially retained the same hourly wage rate they had while working for Chaparral. The record is silent as to how many, if any, of Chaparral's employees were not hired by the Employer.

[5] Field Superintendent Scott Mathewson and Service Manager Taylor Mathewson, Maxfield's nephews, work for the Employer and are supervised by T. Mills and Maxfield. Scott Mathewson supervises most of the sprinkler fitters and assigns projects. Taylor Mathewson supervises three sprinkler fitters.

leaving to work at Fire Fly Fire. In late 2019, T. Mills contacted D. Mills to inform him that the Employer had a lot of work and was looking to hire new employees. D. Mills proceeded to interview with his brother and the Employer hired him in December 2019. D. Mills received a $1500 bonus, as did other employees hired by the Employer around that time. T. Mills had a very limited role in the Employer's decision to implement the bonus and no role in its decision to provide the bonus to his brother or other new hires.

D. Mills received a starting wage of $31 per-hour. T. Mills testified that he made no recommendation regarding his brother's starting wage rate and asserted that the rate was based on the application of the Employer's wage scale to his brother's experience. D. Mills' wage rate was $8.50 more per-hour than the $22.50 per hour he was earning at Fire Fly Fire. D. Mills testified that the absence of a driver's license, which he was in the process of reacquiring at the time of his hiring, had led to a low wage rate at Fire Fly Fire despite his position as a foreman. D. Mills received the same Employer benefits as other employees.

In August of 2020, in conjunction with D. Mills' annual review, President Brown and the Employer's Human Resources Department granted D. Mills a 16% wage increase to $36 an hour. D. Mills characterized the wage increase as "probably the biggest" he had ever received.[6] On July 1, 2021, D. Mills received a 3% wage increase to $37.08. His current hourly wage is the same as Jordan Rose's. Rose is also classified as a journeyman under the bargaining agreement. T. Mills characterized Rose as the second most experienced pipe fitter after his brother. D. Mills earns approximately $4 per hour more than Jason Watts and Gabriel Were, two other employees classified as journeymen under the bargaining agreement. T. Mills testified that Watts and Were performed work that was a bit less complex than the work performed by D. Mills and Rose.[7]

D. Mills, as with other employees, could suggest where and what job he wanted to work. T. Mills testified that his brother does not receive any flexible or special scheduling arrangements and is subject to the same criteria to work overtime as other employees. T. Mills also testified that his brother does not attend any management meetings or fill in for any managers.

C. Jacob Wynn

The Employer hired J. Wynn after its acquisition of Chaparral. J. Wynn began

[6] Other employees also received hourly wage rate increases in conjunction with their August 2020 annual review. Although no employee received a $5 per-hour wage increase, some of the increases were, on a percentage basis, greater than or similar to D. Mills. Employees who received wage rate increases included Leroy Martinez-Fierro from $15 to $18 (20%), Jason Watts from $27 to $31 (15%), Cameron King from $20 to $23 (15%), Jaydess Jacobsen from $23.12 to $26 (12%), Jordon Rose from $34 to $36 (6%), Josh Lind from $22.70 to $24 (6%), and Gabriel Were from $30 to $32 (6%).

[7] Richard Larson, T. Mills' uncle, classified as a journeyman under the bargaining agreement, and who recently left the Employer, was making $38 per-hour, $2 per-hour more than D. Mills

working for Chaparral in 2016, after he learned about job openings from his girlfriend, who is the Employer's Operations Manager Maxfield's ex-stepdaughter. J. Wynn testified that Maxfield provided no assurances that the Employer would hire him after it acquired Chaparral. He further asserted that Maxfield has not helped him in any way. Wynn initially received $19.51 per-hour, the same wage rate he had received at Chaparral. His hourly wage rate since the Employer's acquisition of Chaparral has increased to $32.15. In July 2019 and November 2019, Wynn received $2 per-hour wage increases to match job offers he had received from competitors.[8] Likewise, in May 2020 he received a wage increase of $2.50 per-hour to match an offer he had received to work for a competitor. In August 2020, Wynn, to his "surprise[,]" received another $2.50 per-hour wage increase in conjunction with his annual review. On July 1, 2021, Wynn received a $3.15 per-hour wage increase to coincide with his progressing from an apprentice class 10 under the bargaining agreement to a journeyman.

At some point, the service department became short staffed. The staffing shortage led J. Wynn to request, and obtain, a transfer from installation to service and inspection work. As Wynn characterized it, he "got tired of sweating all day long and lifting heavy pipes." Wynn is in the process of obtaining his inspection license, but Service Supervisor T. Mathewson agreed to have Wynn focus on repair and maintenance given that two other employees in the service department primarily perform inspections.

T. Mills testified that Wynn does not receive any flexible or special scheduling arrangements and is subject to the same criteria to work overtime as other employees. Mills also testified that Wynn does not attend any management meetings or fill in for any managers.

D. Legal Framework

The Board "has long hesitated to include the relatives of management in bargaining units because their interests are sufficiently distinguished from those of other employees." *Palagonia Bakery Inc.*, 339 NLRB 515, 536 (2003). Accord *Iberia Road Markings Corp.,* 353 NLRB 1009, 1018 (2009). The Board, however, does not exclude an employee simply because the employee is related to a member of management. *Id.*[9] Rather, the Board examines a variety of factors to determine whether an employee's familial ties are sufficient to align his or her interest with management and therefore warrant exclusion from the bargaining unit. *Id.* The greater the family involvement in the ownership and management of the company, the more likely the employee relative will be viewed as aligned with management and therefore excluded. *NLRB v. Acton Automotive*, 469 U.S. 490, 494-495 (1985); *Palagonia Bakery*, 339 NLRB at 536. In this regard, the standard applied by the Board to the relatives of managers varies depending on the degree to which the managers exert control over the operations of the employer.

For relatives of managers of closely-held corporations, the Board applies an expanded community of interest test to determine whether they should be excluded from a bargaining unit.

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[8] In July 2019, Jordon Rose received a $6.77 per-hour wage increase from $27.33 to $34.

[9] The statutory exclusion under Section 2(3) of the Act that specifically excludes from the definition of employee "any individual employed by his parent or spouse[,]" but provides for no other exclusion on the basis of family relationship, does not apply here.

Futuramik Indus., Inc., 279 NLRB 185, 185 (1986). Under this test, the Board may, in addition to the usual factors, consider how high a percentage of stock the relative owns, how many of the shareholders are related to each other and whether the shareholder is actively involved in management or acts as a supervisor. The Board also looks at how many relatives are employed as compared to the total number of employees, and whether the relative lives in the same household or is partially dependent on the shareholder. *Iberia Road Markings*, 353 NLRB at 1018; *Futuramik Indus.*, 279 NLRB at 185. The Board further considers whether the employee receives special job-related benefits such as higher wages or favorable working conditions, but the presence of job-related privileges is not required to establish a lack of community of interest. *Action Automotive*, 469 U.S. at 494-95.

In contrast, when determining whether to exclude the relatives of non-owner managers, the Board focuses on whether the relative enjoys a "special status on the job because of their relationship to the nonowner." *Cumberland Farms,* 272 NLRB 336, 336 n.2 (1984). Accord *R&D Trucking, Inc*., 327 NLRB 531, 533 (1999). Evidence indicative of special status includes a differing method of payment for work performed (*Novi-Am., Inc.-Atlanta,* 234 NLRB 421, 422 (1978)), and a modified daily work schedule (*Terraillon Corp.,* 280 NLRB 366, 374 (1986)). Other indications of special status include salary differential, unique job duties, and greater leeway in work rules. *Blue Star Ready Mix*, 305 NLRB at 430-431, *R&D Trucking*, 327 NLRB at 533.

The Union, as the party seeking to exclude individuals from voting, has the burden of establishing that they are ineligible to vote. *Iberia Road Markings*, 353 NLRB at 1018.

E. Analysis

1. D. Mills

The record does not support a finding that D. Mills should be excluded as a relative of management. As an initial matter, although D. Mills' brother, T. Mills, is actively engaged in the management of the Employer's Salt Lake City branch and is a statutory supervisor, he has less than a 1% equity stake in the Employer.[10] Given such limited equity, I decline to characterize T. Mills as an owner of the Employer. See *Cumberland Farms*, 272 NLRB at 336 n.2 (employer president "'not an owner'" when he claimed to own less than 1% of the employer) quoting *Pandick Press Midwest*, 251 NLRB 473, 473 (1980). Moreover, there is no evidence that D. Mills lives in the same household as his brother or is financially dependent on him. Accordingly, even if this case is classified as one where a relative works for an owner of a closely held corporation, T. Mills' extremely limited equity stake and the lack of D. Mills' financial dependency on his brother

[10] There is no claim that either D. Mills or T. Mills is related to the majority stockholder or any other stockholder.

distinguishes this case from those where the Board has relied on the percentage of ownership to exclude an employee relative from the bargaining unit.[11]

I further find that as a relative of a non-owner manager, there is insufficient evidence to establish that D. Mills enjoyed special status or special privileges due to his familial relationship to T. Mills. The Union's primary claims, that the circumstances regarding D. Mills' hiring, his initial pay rate, and history of wage increases demonstrates special treatment, are not supported by the evidence.

Regarding the Employer's hiring of D. Mills, he learned about the job opening from his brother and interviewed with him. Moreover, D. Mills had previously worked for his brother at Chaparral. There is no evidence, however, that D. Mills was not qualified for the job opening or that he prevented another more qualified applicant from being hired. The Union does not dispute that the bargaining agreement properly classifies D. Mills as a journeyman. Nor does the Union claim that he does not perform work commensurate with that classification.

Regarding wages, the evidence reflects that T. Mills does have authority to recommend wage increases and is involved in annual reviews. The evidence fails to establish, however, that D. Mills' starting wage rate or subsequent wage increases constituted special status. To the contrary, there is no evidence that D. Mills' starting wage rate of $31 per-hour was not commensurate with his experience. D. Mills had significant experience and performed complex work. Nor does the substantial difference between D. Mills' starting wage rate and the wage rate he had received from his prior employer on its own demonstrate special status. Although D. Mills has received pay raises since he began working for the Employer, including one large wage increase of $5 per hour, the evidence reflects that other employees have received similar wage increases in dollar or percentage terms. Accordingly, the evidence fails to establish that the wage increases constituted special treatment.

Even assuming that D. Mills received an unusually high initial wage rate or an unusually large wage increase, his current wage rate is well within the framework of the wage rates received by other journeymen. Thus, D. Mills earned less than a journeyman who recently left the Employer, the same as another journeyman, and a few dollars more than two other journeymen who have less experience. In these circumstances, the evidence fails to establish that D. Mills received special treatment regarding his pay. *Cf. Novi Am.*, 234 NLRB at 422 (excluding son of employer's regional manager where employee was paid in a manner differently than other employees, had the ability set his own hours, and was hired to work whenever he needed money).

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[11] See, for example, *Aurora Fast Freight*, 324 NLRB 20, 21-22 (1997) (excluding employee who lived with his father, a company vice-president who owned 40% of the company, and whose uncle was the company's majority stockholder and served as its president); *Holthouse Furniture Corp*., 242 NLRB 414, 415-16 (1979) (excluding two employees related to persons who owned at least 70% of the outstanding stock of the employer, including individuals who served on the board of directors, and who enjoyed a special status that included the ability to set their own hours); *Marvin Witherow Trucking*, 229 NLRB 412, 412 (1977) (excluding employee who worked for a sole proprietorship owned by the employee's son and daughter-in law).

The evidence also fails to establish that D. Mills enjoys special status or privileges with respect to his other job-related functions. Rather, D. Mills receives the same benefits as other employees and is subject to the same Employer policies. In addition, D. Mills does not attend management meetings and there is no evidence to support a finding that his work schedule or assignments are any different than other employees. Although employees can offer suggestions regarding their work assignments, there is no evidence that D. Mills has made such suggestions, let alone any evidence that he received preferential treatment regarding assignments. *Cf. NLRB v. Connecticut Foundry Co.*, 688 F.2d 871, 878-79 (2d Cir. 1982) (excluding daughter of plant manager and son of plant engineer who enjoyed special status as evidenced by the flexibility in scheduling their work hours around school and vacations.) Likewise, although T. Mills can unilaterally handle certain disciplinary matters, the record contains no examples of issued discipline, let alone any evidence that discipline was disparately applied between D. Mills and other employees. *Cf. Alois Box Co., Inc*., 326 NLRB 1177, 1182-83 (1996) (brother of plant manager received special privileges where he was immune from any meaningful discipline for attendance problems and was permitted to work his own schedule, while another employee was terminated for absenteeism.)

For the above reasons, I find that D. Mills does not enjoy special status at the Employer's Salt Lake City branch by virtue of him being the brother of Branch Manager T. Mills.[12] I thus find that D. Mills is eligible to vote in the election.

2. J. Wynn

The record does not support a finding that J. Wynn should be excluded as a relative of management because he is not directly related by blood or marriage to any of the Employer's owners or managers. Rather, his girlfriend is Operations Manager Maxfield's ex-stepdaughter. T. Mills' opinion that Maxfield, at least at one time, treated his now ex-stepdaughter like a daughter, and evidence that J. Wynn attends an annual Maxfield family party is insufficient to make him a relative of management. I do not classify Maxfield as an owner, given his incredibly small equity stake in the Employer.[13]

In the alternative, even if J. Wynn is considered a relative of management, there is insufficient evidence to establish that he enjoyed special status or special privileges due to his girlfriend's connection to Operations Manager Maxfield. Wynn began working at the Salt Lake facility under Chaparral. There is no evidence that Wynn received any favorable treatment in his initial hiring by the Employer or thereafter. Although Wynn's hourly wage rate has increased considerably since he began working for the Employer, those increases fail to establish special treatment. Rather, Wynn's wage increases correspond to a combination of the Employer matching other job offers and his increased experience. That experience led to Wynn's classification as an

[12] *Cf. R&D Trucking*, 327 NLRB at 532-33 (driver/warehouse worker who was a son-in-law of the company president excluded from the unit where, unlike unit employees, he spent a substantial percentage of his time working in the front office, had a higher salary than unit employees, did not punch a timecard, and accompanied his father-in-law to out of town meetings.)
[13] Maxfield has a smaller equity stake than T. Mills' .05% equity stake.

apprentice class 10 in the parties' bargaining agreement, and as a journeyman at the time of the hearing. Moreover, the fact that Wynn, as the newest journeyman, receives a lower hourly wage rate than other more experienced journeymen undermine any claim that J. Wynn received favorable treatment with respect to his wages.

The evidence is also insufficient to establish that J. Wynn's transfer from the installation to the service side of the Employer's operations where he performed less physically demanding work demonstrates special treatment. The Union argues that the transfer was due to his connection to Operations Manager Maxfield but fails to provide any supporting evidence. Significantly, there is no evidence that any other employee was also seeking a transfer at the time of Wynn's request or that any employee was previously denied such a request.

For the above reasons, I find that J. Wynn is eligible to vote in the election.

II. METHOD OF ELECTION

The Employer and the Petitioner expressed a preference for a manual election while the Union is seeking an election by mail ballot. I find that the current pandemic conditions in Salt Lake County, Utah where a manual election would be held, warrant directing a mail ballot election.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. See National Labor Relations Board Casehandling Manual (Part Two) Representation Proceedings, Sec. 11301.2; *San Diego Gas and Elec.,* 325 NLRB 1143, 1145 (1998). However, the Board has stated that a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election problematic, to conduct an election by mail ballot. *Id.* The Board addressed a few specific situations, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other unspecified extraordinary circumstances. *Id*.

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *Id.*; *Halliburton Serv.*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958). The Board's discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas and Elec.*, 325 NLRB at 1144-1145. The Regional Director's decision should not be overturned unless a clear abuse of discretion is shown. *National Van Lines*, 120 NLRB at 1346.

During the COVID-19 pandemic, the risk of infection associated with gatherings and in-person activities has impacted the way the Board conducts its elections, leading to an increase in the number of elections conducted by mail. After a brief pause in elections early in the pandemic, the Board resumed conducting elections in April 2020, with many Regional Directors directing primarily mail ballot elections in light of the extraordinary circumstances presented by the COVID-19 pandemic. To assist Regional Directors in safely conducting elections, on July 6 the General Counsel issued a memorandum titled "Suggested Manual Election Protocols," *Memorandum GC 20-10,* setting forth detailed suggested safety procedures.

Thereafter, in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), the Board addressed how Regional Directors should assess the risks associated with the pandemic when considering the appropriate method of election. In doing so, the Board reaffirmed its longstanding policy favoring manual elections, but outlined six situations that suggest the propriety of mail ballots. Specifically, when one or more of the following situations is present, a Regional Director should consider directing a mail ballot election:

> 1. The Agency office tasked with conducting the election is operating under "mandatory telework" status;
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> 2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
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> 3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
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> 4. The Employer fails or refuses to commit to abide by *GC Memo 20-10*, Suggested Manual Election Protocols;
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> 5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
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> 6. Other similarly compelling circumstances.

After a review of the current state of the COVID-19 virus in Salt Lake County, where the Employer's facility is located, I have determined that a mail-ballot election is the appropriate option based on the second factor.

The first *Aspirus Keweenaw* factor does not favor a mail ballot - the Regional Office is not currently in mandatory telework status. Regarding the third factor, I find no state, county, or local measure as to maximum gathering size would be implicated by a manual election. With respect to the fourth factor, the Employer's commitments regarding precautions for a manual election are generally consistent with *GC Memo 20-10*, and as to the fifth factor, there is no basis to find a COVID-19 outbreak is ongoing at the Employer's facility.[14]

In addressing the second factor – whether the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or whether the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher – the Board

[14] I would note, however, that holding an in-person election would require employees to alter their typical schedules under which they rarely go to the Employer's facility.

directs Regional Directors to utilize the data published by Johns Hopkins University, or data from official state or local government sources. Where county level data are not available, Regional Directors should look to state level data.

The Salt Lake County Health Department COVID-19 Data Dashboard establishes that the 14-day trend of cases is increasing and that the positivity rate is over 5%. Thus, the number of positive cases in Salt Lake County has increased from 175 on July 23 to 364 on August 4.[15] In addition, on August 4, the positivity rate in Salt Lake County was 14.59%.[16]

Thus, pursuant to the second *Aspirus Keweenaw* factor, I have decided that a manual election at this time would be potentially unsafe, and I have therefore directed a mail ballot election.[17]

CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act and is subject to the Board's jurisdiction.

3. The parties stipulated, and I find, that Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties stipulated, and I find, that there is no contract bar or other bar to an election.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:[18]

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[15] https://slco.org/health/COVID-19/data (see slide 1)

[16] https://slco.org/health/COVID-19/data (see slide 4)

[17] I would also note that due to the spread of the Delta variant, the CDC as of July 27, 2021, added a recommendation for fully vaccinated people to wear a mask in public indoor settings in areas of substantial or high transmission (www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html), and that the CDC classifies Salt Lake County, as well as almost the entire state of Utah, as having a high transmission rate between July 20 and July 26, 2021 (https://covid.cdc.gov/covid-data-tracker/#county-view).

[18] The parties stipulated to the appropriateness of the bargaining unit.

Included: All full-time and regular part-time Sprinkler Fitters of the Employer's branch location at 3676 West California Avenue, Suite D100, Salt Lake City, Utah 84104 engaged primarily or exclusively in the installation, maintenance, and repair of fire sprinkler systems, including the unloading, handling by hand or with power equipment, and installation of all piping or tubing, appurtenances, and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants, and hydrant mains, standpipes, and hose connections to sprinkler systems, sprinkler tank heaters, and air lines used in connection with fire sprinkler systems, but excluding steam fire protection systems and excluding the inspection or testing of fire protection systems.

Excluded: All other employees, including all field technicians not primarily engaged in the scope of work described above (for example, technicians handling inspections, alarm systems, surveillance systems, air sampling smoke detection systems, dry chemical systems, CO2 systems, clean agent systems, and pre-engineered systems), all office employees, Confidential employees, Managers, Supervisors, and Guards, as defined by the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Road Sprinkler Fitters Local Union No. 669, Columbia Maryland, of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.

A. Election Details

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **1:00 p.m. on Tuesday, August 24, 2021**, ballots will be mailed by an agent of Region 27 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, August 31, 2021 should communicate immediately with the National Labor Relations Board by either calling the Region 27 Office at **(303)344-3551** or our national toll-free line at **1-844-762-NLRB (1-844-762-6572).**

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 27 office by **2 p.m. on Tuesday, September 14, 2021**. **All ballots will be commingled and counted by an agent of Region 27 of the National Labor Relations Board on Tuesday, September 14**, **2021 at 2:00 p.m.**, via a videoconference to be arranged by the Region. In order to be valid and counted, the returned ballots must be received at the Regional Office prior to the counting of the ballots.

No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **August 5, 2021**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date, or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Tuesday, August 10, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will not serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must

be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election that will issue and that accompany this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review in this case may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated this 6th day of August 2021.

/s/ *Leticia Peña*

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